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8 UNITED STATES DISTRICT COURT

9 STATE OF NEVADA

10 MARK WERNER,

Case No.:

11 Plaintiff,

12 v.

13 STARPOINT MITIGATION LLC

14 Defendant.  
15

**COMPLAINT FOR DAMAGES  
PURSUANT TO THE FAIR DEBT  
COLLECTION PRACTICES  
ACT 15 § 1692, ET. SEQ.  
AND RELATED STATE LAWS  
AND JURY DEMAND**

16  
17 Plaintiff, MARK WERNER ("Plaintiff" or "Mr. Werner"), by and through his attorneys of  
18 record, VERNON NELSON, ESQ. and STEVEN H. BURKE, ESQ. of the LAW OFFICE OF  
19 VERNON NELSON, and for his claims for relief against defendant, STARPOINT MITIGATION  
20 LLC ("Defendant" or "Starpoint"), complains and alleges as follows:

21 **NATURE OF THE ACTION**

22 1. Plaintiff brings this action for damages pursuant to the Fair Debt Collections Practices  
23 Act ("FDCPA") under 15 U.S.C. § 1692 *et seq.* and the Telephone Consumer Protection Act  
24 ("TCPA") under 47 U.S.C. § 227 *et seq.* for Defendant's unlawful conduct.

25 **JURISDICTION AND VENUE**

26 2. This action arises under and is brought pursuant to the FDCPA and TCPA. Subject  
27 matter jurisdiction is conferred upon this Court pursuant to 47 U.S.C. §227, 15 U.S.C. §1692k and 28  
28 U.S.C. §§1331.

3. Venue is proper in this Court pursuant to 28 U.S.C. §1391(b) as Defendant conducts business in the District of Nevada and the acts of the Parties occurred in the District of Nevada.

**PARTIES**

4. Plaintiff is a natural “person”, as defined by 47 U.S.C §153(39), who resides in the State of Nevada and is a “consumer” as defined by 15 U.S.C. §1692a(3).

5. Starpoint is a foreign limited-liability partnership doing business in the State of Nevada. Further, Starpoint is a debt collector as that term is defined by 15 U.S.C. § 1692a (6).

6. Defendant is a “person” as defined by 47 U.S.C. §153(39).

7. Defendant acted through its agents, employees, officers, members, directors, heirs, successors, assigns, principals, trustees, sureties, subrogees, representatives and insurers at all times relevant to the instant action.

**FACTUAL ALLEGATIONS**

8. Plaintiff incorporates by reference each and every allegation previously made in this Complaint, as if fully set forth herein.

9. Within the past year, the Defendant has committed violations of the FDCPA and the related state laws described below.

10. Defendant claims it attempting to collect a debt owed by Plaintiff (the “Debt”).

11. Specifically, Mr. Werner has received calls from Defendant Starpoint in an attempt to collect the Debt. The calls from Defendant Starpoint displayed numbers (800) 319-3775 and (844) 365-7204 on Plaintiff’s cellular telephone on or around November 5, 2018.

12. On or before November 5, 2018, Mr. Werner advised Starpoint by and through its employee representative that he no longer wished to receive calls on his cellular phone, including any calls placed with the use of a “dialer” or Automatic Telephone Dialing System (“ATDS”) and/or pre-recorded voice messages.

13. Starpoint continued to call Mr. Werner, in violation of 15 U.S.C. §1692c(a)(1), as Starpoint knew that calls placed to Mr. Werner’s cellular phone were inconvenient to him.

14. Starpoint’s calls violated 47 U.S.C. §227(b)(1)(A), as Mr. Werner had also revoked any prior consent to be called using an ATDS or pre-recorded voice message.

1           15.     On or about November 5, 2018, in connection with its attempts to collect the Debt,  
2     Starpoint representative, Mr. James Mason, contacted Mr. Werner on his cellular telephone again.  
3     Mr. Werner reminded Mr. James Mason that he had previously advised Starpoint that he did not want  
4     any calls placed to his cellular telephone.

5           16.     After Starpoint's contact on November 5, 2018, Starpoint failed to provide a notice of  
6     debt/validation letter as required by 15 USC §1692g. As such, Starpoint has violated the FDCPA.

7           17.     Mr. Werner has also discovered that Starpoint has communicated information about the  
8     Debt to Mr. Werner's family members on several occasions, including October 26, 2018, November 6,  
9     2018, November 7, 2018.

10          18.     Upon information and belief, Starpoint reported the Debt to at least one credit bureau.  
11     As a result, Starpoint has violated 15 USC §1692e(B)(8) by communicating to any person credit  
12     information which is known to be false, including the failure to communicate that a disputed debt is  
13     disputed.

14          19.     The FDCPA prohibits abusive debt collection practices by debt collectors. In this  
15     regard, the FDCPA sets certain standards for debt collectors and their communications with debtors.  
16     These standards include: (1) the requirement that debt collectors advise debtors of their rights to  
17     dispute the debt and demand verification; (2) a ban on the use of false and misleading statements in  
18     attempting to collect the debt; and (3) a prohibition against collecting debts via "unfair or  
19     unconscionable means."

20          20.     As is set forth above in paragraphs 8 through 17 above, Defendant violated multiple  
21     sections of the FDCPA and used "unfair and unconscionable means" in its attempts to collect the Debt  
22     from Plaintiff.

23          21.     Defendant's violations of the FDCPA have caused the Plaintiff to suffer substantial  
24     damages. In this regard, the Plaintiff has suffered: (1) substantial economic damages; (2) severe  
25     emotional damages, and (3) damages to his credit history and reputation.

26          22.     In addition, the Plaintiff has incurred substantial attorney's fees.

27          23.     The actions of Defendants were committed by other persons or entities employed by  
28     the Defendant. The actions of the Defendant were incidental to, or of the same general nature as, the

responsibilities that these agents were authorized to perform by the Defendant.

24. The actions of Defendant were committed in its capacity as agents of their principal. The actions of the Defendant were committed within the scope and authority granted by their principal and were motivated to benefit their principal.

25. Defendant is therefore liable to Plaintiff through the doctrine of Respondeat Superior for the unlawful actions of their employees, including but not limited to violations of the FDCPA and the laws of the State of Nevada.

**FIRST CLAIM FOR RELIEF**

**(Violations of the FDCPA, 15 U.S.C. § 1692, *Et. Seq*)**

26. Plaintiff incorporates by reference each and every allegation previously made in this Complaint, as if fully set forth herein.

27. Plaintiff is a “consumer” as defined by 15 U.S.C §1692a(3) of the FDCPA.

28. Defendant is a “debt collector” as defined by §1692a(6) of the FDCPA, because it regularly uses the mail and/or the telephone to collect, or attempt to collect, delinquent consumer accounts.

29. Within the past year, Defendant, who is a debt collector under the FDCPA, committed several violations of the FDCPA.

30. As is set forth above in paragraphs 8 through 16 above, the Defendant violated multiple sections of the FDCPA and used “unfair and unconscionable means” to collect a debt by attempting to collect the debt from Plaintiff.

31. Defendant committed numerous violations of the FDCPA; including but not limited to:

A. by “mischaracterizing the character, amount, and legal status of the Domesticated Judgment.”

B. by employing various false representations and deceptive means to collect the alleged debt from Plaintiff.

C. by taking illegal action to collect the debt from Plaintiff.

D. by attempting to collect from the Plaintiff even though Plaintiff is not liable for the debt.

32. The Defendant's numerous violations of the FDCPA constitute numerous, repeated, knowing, intentional, reckless and/or negligent violations of the FDCPA. As a result of such violations, the Plaintiff is entitled to statutory damages, plus actual damages to be proven at the time of trial in this matter.

33. As a result of Defendant's unlawful conduct, Plaintiff has suffered economic and emotional distress damages.

34. Plaintiff has been forced to retain counsel to pursue this matter and is entitled to recover reasonable attorney's fees plus costs incurred under 15 U.S.C. § 1692k.

## **SECOND CLAIM FOR RELIEF**

**(Violation of the Telephone Consumer Protection Act)**

35. Plaintiff incorporates by reference each and every allegation previously made in this Complaint, as if fully set forth herein.

36. The Telephone Consumer Protection Act (“TCPA”), pursuant to 47 U.S.C. §227(b)(1)(A), prohibits calling persons on their cellular phone using an automatic telephone dialing system (“ATDS”) or an artificial or prerecorded voice, without their consent. The TCPA, under 47 U.S.C. § 227(a)(1) defines an ATDS as “equipment which has the capacity...to store or produce telephone numbers to be called, using a random or sequential number generator; and to dial such numbers.”

37. Defendant used an ATDS in connection with its communications directed towards Plaintiff's cellular phone. The noticeable pause lasting several seconds in length that Plaintiff experienced during answered calls from Defendant is instructive that an ATDS is being utilized to generate the phone calls.

38. Defendant violated the TCPA by placing at least 1 phone call to Plaintiff's cellular phone using an ATDS without his consent.

39. Plaintiff has not at any time given consent to Defendant, the original creditor or any predecessor in interest, to be called with an ATDS on his cellular phone, regarding the subject debt.

40. The calls placed by Defendant to Plaintiff were regarding business transactions and not for emergency purposes as defined by the TCPA under 47 U.S.C. §227(b)(1)(A)(i).

41. Under the TCPA, pursuant to 47 U.S.C. § 227(b)(3)(B), Defendant is liable to Plaintiff for at least \$500.00 per call. Moreover, Defendant's willful and knowing violations of the TCPA should trigger this Honorable Court's ability to triple the damages to which Plaintiff is otherwise entitled to under 47 U.S.C. § 227(b)(3)(C).

42. As pled in herein, Plaintiff has been harmed and suffered damage as a result of Defendant's illegal actions.

### THIRD CLAIM FOR RELIEF

**(Defamation)**

43. Plaintiff incorporates by reference each and every allegation previously made in this Complaint, as if fully set forth herein.

44. As stated in the Factual Allegations and the other Claims for Relief in this Action, Defendant knowingly and/or recklessly made false statements about Plaintiff to at least one credit bureau.

45. As stated in the Factual Allegations and the other Claims for Relief in this Action, Defendant knowingly and/or recklessly made false statements about Plaintiff to Plaintiff's family members.

46. Defendant's false statements were not privileged by any common law or statutory privilege and were, and are, being made in a public forum. Defendant's false statements were made intentionally and without concern whether the statements were true. The false statements have harmed the Plaintiff.

47. Defendant's statements were made intentionally or with reckless disregard to the truth or veracity of the statements. Defendant knew or should have known its false statements would harm the Plaintiff.

48. The actions of Defendants have been the direct and proximate cause of damages to Plaintiff in an amount in excess of Fifteen Thousand Dollars (\$15,000), and other special and general damages according to proof at trial.

49. The actions of Defendants were malicious, fraudulent, and/or oppressive and Plaintiff is entitled to punitive damages in an amount in excess of Fifteen Thousand Dollars (\$15,000).



50. It has been necessary for Plaintiff to retain the services of an attorney to prosecute this action and Plaintiff is entitled to reasonable attorneys' fees and costs incurred herein.

WHEREFORE, Plaintiff, MARK WERNER, respectfully requests that this Honorable Court enter judgment in his favor as follows:

- A. Declaring that the practices complained of herein are unlawful and violate the aforementioned statutes and regulations;
- B. Awarding Plaintiff damages of at least \$500.00 per phone call and/or treble damages pursuant to 47 U.S.C. § 227(b)(3)(B) & (C);
- C. For general, consequential, incidental, and special damages in excess of Fifteen Thousand Dollars (\$15,000.00);
- D. For punitive damages in excess of of Fifteen Thousand Dollars (\$15,000.00);
- E. Awarding Plaintiff costs and reasonable attorney's fees;
- F. Enjoining Defendant from further contracting Plaintiff; and
- G. Awarding any other relief as this Honorable Court deems just and appropriate.

**DEMAND FOR JURY TRIAL**

Plaintiff demands trial by jury of all of the issues in this action.

Dated this 12<sup>th</sup> day of February, 2019.

THE LAW OFFICE OF VERNON NELSON

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